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10 *Attorneys for Defendants*
 11 *C. R. Bard, Inc. and*
 12 *Bard Peripheral Vascular, Inc.*

13
 14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE DISTRICT OF ARIZONA**

16 IN RE: Bard IVC Filters Products
 17 Liability Litigation

No. 2:15-MD-02641-DGC

18
 19 **JOINT PROPOSED SUMMARY**
FOR PURPOSES OF SUGGESTION
OF REMAND OF MATURE CASES

20 (Assigned to the Honorable David G.
 21 Campbell)

22
 23 Pursuant to the Court's Order dated July 9, 2018 (Doc. 11774), the Parties submit
 24 the following joint proposed summary for purposes of the suggestion of remand of the ten
 25 mature cases in this multidistrict litigation proceeding ("MDL"). *See* Doc. 914-1 (listing
 26 mature cases).

1 **I. Introduction**

2 On August 17, 2015, the Judicial Panel of Multidistrict Litigation (“JPML” or
 3 “Panel”) designated this Court as the transferee court for all related federal actions arising
 4 out of the sale or use of inferior vena cava (“IVC”) filters manufactured and marketed by
 5 Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively, “Bard”). *See*
 6 Doc. 1.¹ Each of the designated cases listed on Exhibit A was transferred to this Court
 7 pursuant to that order. This MDL currently involves more than 4,000 personal injury cases
 8 against Bard.

9 The IVC is a large vein that returns blood to the heart from the lower body. An IVC
 10 filter is a small metal device implanted in the IVC to catch blood clots before they reach the
 11 heart and lungs. This MDL involves seven different generations of Bard’s retrievable IVC
 12 filters – the Recovery®, G2®, G2® Express, G2®X, Eclipse®, Meridian®, and Denali®.
 13 They are spider-like devices that have multiple struts fanning out from a cone-shaped head.
 14 The “limbs” consist of “legs” with elastic hooks that attach to the IVC wall, and shorter
 15 curved “arms” that serve to catch or break up blood clots. Each of these filters is a variation
 16 of its predecessor.

17 The Court entered an order on September 15, 2015, providing for an initial case
 18 management conference. *See* Doc. 72. Following the initial conference held on October 29,
 19 2015, the Court identified ten “mature” cases included in the MDL that were sufficiently
 20 advanced to consider remanding them, but the parties agreed they should remain a part of
 21 the MDL and should not be remanded at that time. *See* Docs. 249, 363 (as amended by Doc.
 22 1485). Following the second case management conference held on January 29, 2016, the
 23 Court and parties concluded that some or all of these cases may be ready for remand before
 24 other cases in the MDL proceeding. *See* Doc. 519. Thereafter, the Court regularly requested
 25 remand status updates for these mature cases. *See* Docs. 1319, 2238, 3214, 4311, 5770, and
 26 8871. The parties indicated that remand should await completion of expert discovery

27

 28 ¹ All references to docket numbers are to the general docket for MDL 2641 (2:15-md-02641-DGC), unless otherwise specified.

1 because such discovery may be relevant in the trials of the mature cases. *See* Doc. 3214 at
 2 3. The Court agreed, concluding that “generic” expert disclosure and discovery, and any
 3 related *Daubert* motions, should be handled in this MDL. *See* Doc. 4311. Accordingly, the
 4 mature cases could not be remanded until any such *Daubert* motions were decided. *See*
 5 Doc. 5770 at 3.

6 The Court held a conference on June 1, 2018, and requested briefing from the parties
 7 addressing the appropriate time for remand of these mature cases. *See* Doc. 11320. The
 8 Court ultimately concluded on June 28, 2018, that it is time to remand these ten mature
 9 cases to their home districts. *See* Doc. 11659.

10 Accordingly, the Court will submit this Suggestion of Remand to the JPML to
 11 facilitate the prompt remand of the designated cases (those listed in Exhibit A) by the JPML
 12 to the transferor courts for further proceedings, including case-specific discovery, pre-trial
 13 motions practice, and final disposition. To assist transferor courts following remand of the
 14 cases listed in Exhibit A, this MDL Pretrial Order describes the events that have taken place
 15 to date in this MDL. A copy of this MDL Order, along with the case files and materials,
 16 will be available to the transferor courts.

17 **II. Background**

18 **A. Case Management Orders**

19 The primary orders governing the pretrial management of MDL 2641 are a series of
 20 Case Management Orders (“CMO”), along with certain amendments. These Orders are
 21 discussed in detail below. All of the CMOs in MDL 2641 can be found at the court’s website
 22 at <http://www.azd.uscourts.gov/case-info/bard>.

23 **B. Lead and Liaison Counsel**

24 CMO No. 1, entered on October 30, 2015 (Doc. 248), appointed Co-Lead/Liaison
 25 Counsel for Plaintiffs to manage the litigation on behalf of Plaintiffs, and set out the
 26 responsibilities of Co-Lead/Liaison Counsel. Plaintiffs’ Co-Lead/Liaison Counsel has
 27 changed since the inception of the MDL. Mr. Ramon Lopez, of Lopez McHugh, LLP, in
 28

1 Newport Beach, California, and Mr. Mark O'Connor, of Gallagher & Kennedy, P.A., in
2 Phoenix, Arizona are now Co-Lead/Liaison Counsel. *See* Doc. 5285. Mr. Richard North of
3 Nelson Mullins Riley & Scarborough, LLP, in Atlanta, Georgia, remains Defendants' Lead
4 Counsel.

5 **C. Plaintiffs' Steering Committee and Common Benefits Fund**

6 CMO No. 1 also directed the selection and appointment of a Plaintiffs' Steering
7 Committee ("PSC") to assist in the coordination of pretrial activities and trial planning. The
8 Co-Lead/Liaison Counsel and the PSC together form the Plaintiffs Leadership Counsel
9 ("PLC"). The PSC acts on behalf of, or in consultation with, Plaintiffs' Co-Lead/Liaison
10 Counsel in the management of the litigation. The PLC assists all Plaintiffs in MDL 2641 by
11 overseeing discovery, appearing before this Court, attending status conferences, and
12 preparing motions and responses regarding case-wide discovery matters. CMO No. 1 was
13 later amended to select and appoint a Plaintiffs' Executive Committee ("PEC") to assist the
14 Co-Lead/Liaison Counsel in the administration, organization, and strategic decisions of the
15 PLC. *See* Doc. 4016. The configuration of the PSC has changed during the course of the
16 litigation. *See* Docs. 248, 4016, 5285.

17 CMO No. 6, entered on December 18, 2015 (Doc. 372), set rules, policies,
18 procedures, and guidelines for costs and attorneys' fees incurred by attorneys acting for the
19 common benefit of all Plaintiffs in MDL 2641.

20 **D. Status Conferences**

21 Since the inception of MDL 2641, the Court has held regular status conferences with
22 Plaintiffs' Co-Lead/Liaison Counsel and Defendants' Lead Counsel to discuss issues
23 related to the litigation. The initial case management conference was held in October 2015.
24 At the initial conference, deadlines were set for, among other things, the filing of a master
25 complaint, a master answer, a short-form complaint and answer, proposed profile forms, a
26 proposed protective order (including Rule 502 provisions), a proposed protocol governing
27 the production of Electronically Stored Information ("ESI"), as well as deadlines to
28

1 complete first-phase MDL discovery and address privilege log issues. *See* Doc. 249.²
 2 Thereafter, the Court conducted status conferences approximately every 10 weeks to ensure
 3 that the parties were on task and to address routine discovery issues and disputes. In addition
 4 to the periodic status conferences, the Court conducted telephonic hearings to address time-
 5 sensitive issues, as well as numerous additional conferences to consider various matters,
 6 including hearings on dispositive motions and general case management issues.

7 **E. Bellwether Trials**

8 On May 5, 2016, the Court entered an Order (Doc. 1662) providing for the selection
 9 of Plaintiffs who would be subject to individual case-specific discovery and eligible to be
 10 part of the “bellwether” trial process. From that group, six Plaintiffs were ultimately
 11 selected for individual bellwether trials. *See* Docs. 5770, 11659. To date, the Court has
 12 presided over two bellwether trials: *Booker v. C. R. Bard, Inc., et al.*, No. CV-16-00474-
 13 PHX-DGC; and *Jones v. C. R. Bard, Inc., et al.*, No. CV-16-00782-PHX-DGC. A third,
 14 fourth, and fifth bellwether trial are currently set for trial in September 2018, February 2019,
 15 and May 2019. The Court has yet to determine whether a sixth bellwether trial should be
 16 held.

17 **1. *Booker v. C. R. Bard, Inc., et al.***

18 The first bellwether trial, *Booker*, involvedding a Bard G2 IVC filter that tilted,
 19 migrated, and fractured, and the fractured struts migrated to the Plaintiff's heart, requiring
 20 open heart surgery to remove the fractured struts and repair damage caused by a
 21 percutaneous removal attempt. The trial, conducted over an 11-day period, resulted in a
 22 verdict in \$2,000,000 in compensatory damages (of which \$1,600,000.00 was attributed to
 23 Bard) and \$2,000,000.00 in punitive damages. The jury found for Plaintiff on her negligent
 24 failure-to-warn claim, and in favor of Bard on Plaintiff's strict liability and negligent design,

25
 26 ² The mature cases listed in Exhibit A were not governed by the Master Complaint and
 27 Master Responsive Pleading, but continue to be governed by the complaints (including any
 28 amended complaints) and answers filed in the various transferor courts prior to transfer. *See* Doc. 363 (as amended by Doc. 1485). The parties were also relieved from preparing or
 exchanging profile forms in these particular cases. *See* Doc. 365 (as amended by Doc. 927).

1 as well as and strict liability failure-to-warn claims, but in favor of Plaintiff on her negligent
 2 failure to warn claim. The jury awarded compensatory damages against Bard in the amount
 3 of \$1,600,000.00 (after 20% reduction of \$2,000,000.00 award assessed against a non-
 4 party), and punitive damages in the amount of \$2,000,000.00. The Court denied Bard's
 5 motion for judgment as a matter of law and Bard's motion for a new-trial. Bard has appealed
 6 to the United States Court of Appeals for the Ninth Circuit (No. 18-16349). Plaintiff Booker
 7 has cross-appealed (No. 18-16460).

8 **2. *Jones v. C. R. Bard, Inc., et al.***

9 The second bellwether trial, *Jones*, involving a Bard Eclipse IVC Filter, resulted in
 10 a jury verdict in favor of Bard on Plaintiff's strict liability and negligent design, and strict
 11 liability and negligent failure-to-warn claims. To date, Plaintiff has not filed for post-trial
 12 relief. Plaintiff has appealed to the United States Court of Appeals for the Ninth Circuit
 13 (No. 18-16461).

14 **3. *Kruse v. C. R. Bard, Inc., et al.***

15 The third bellwether trial, *Kruse*, was set for trial on September 18, 2018. Following
 16 review of Bard's motion for summary judgment, the Court determined that it must grant
 17 summary judgment in favor of Bard on the claims asserted by Plaintiff Kruse as barred by
 18 the statute of limitations. After conferring with the parties, the *Hyde v. C. R. Bard, Inc., et*
 19 *al.*, case was moved to the September 2018 bellwether slot in lieu of *Kruse*.

20 **4. Other Scheduled Bellwether Trials**

21 A fourth and fifth bellwether trial are currently set for trial in February 2019 and
 22 May 2019. The Court plans to try the *Tinlin v. C. R. Bard, Inc., et al.*, and *Mulkey v. C. R.*
 23 *Bard, Inc., et al.*, cases during these months. But the Court has yet to determine the order
 24 of the trials, and the dates for the trial in May. The Court has also yet to determine whether
 25 a sixth bellwether trial should be held.

26 **III. Discovery**

27 **A. Generic Fact Discovery**

1 Plaintiffs have conducted extensive fact discovery against Bard. All common fact
2 discovery in these cases has now been completed. Therefore, transferor courts need not be
3 concerned with facilitating general fact discovery on remand.

4 Prior to the establishment of this MDL, Plaintiffs had conducted substantial common
5 discovery against Bard (including in the mature cases) concerning all aspects of Bard's IVC
6 filters, including the design, testing, manufacturing, marketing, labeling, and post-market
7 surveillance of these devices. Bard produced over 2.5 million pages of documents and ESI,
8 responded to thousands of written discovery requests, and over 80 corporate witnesses.²
9 depositions were taken. All of that pre-MDL general fact discovery was made available by
10 Bard to all Plaintiffs in the MDL.

11 This MDL was formed to centralize all pretrial proceedings and finally complete all
12 common fact and expert discovery concerning Bard's IVC filters. *See* Doc. 1. Discovery in
13 the MDL proceeding was separated into multiple phases. The parties completed the first
14 phase of MDL discovery in early 2016. *See* Doc. 519. First-phase MDL discovery included
15 production of documents related to an FDA inspection and Warning Letter, an updated
16 production of complaint (adverse event) files, and an updated version of Bard's complaint
17 database relating to the Recovery, G2, G2X, G2 Express, Eclipse, Meridian, and Denali
18 Filters. *See* Doc. 249. Plaintiffs also conducted a Rule 30(b)(6) deposition concerning the
19 FDA inspection and Warning Letter, and a deposition of corporate witness, Kay Fuller.

20 The parties completed the second phase of MDL discovery for common fact
21 discovery in February 2017. CMO No. 8, entered on February 2, 2016 (Doc. 519), set
22 deadlines for the second phase of discovery in the MDL proceeding, which included all
23 common fact and expert issues in the MDL, but not case-specific issues to be resolved in
24 individual cases after remand. *See* Docs. 249, 519. Second-phase MDL discovery
25 specifically included extensive additional discovery related to Bard's system architecture
26 for ESI, Bard's ESI collection efforts, Bard's national and regional sales and marketing
27 practices, and ESI relating to Bard's IVC filters. Plaintiffs also deposed two corporate
28

witnesses in connection with the allegations that Kay Fuller had made on national television that a submission to the FDA regarding the Recovery Filter did not bear her original signature after she declined to sign it because of her concerns about the filter. *See Doc. 1319.* Plaintiffs further deposed additional corporate witnesses concerning the FDA inspections and Warning Letter. *See Doc. 1319.*

Bard also produced discovery regarding the sales and marketing materials related to the Simon Nitinol Filter (“SNF”), documents comparing filter performance and failure rates to the SNF, and internal and regulatory communications relating to the SNF. *See Docs. 1319, 10489.* The Court denied Plaintiffs’ request to obtain ESI discovery from Bard’s overseas operations. *See Doc. 3398.* The Court denied Bard’s request to obtain discovery of communications between Plaintiffs’ counsel and NBC related to NBC news stories about the products at issue in this litigation, and third-party financing that may be in place with respect to Plaintiffs in this MDL. *See Docs. 3313, 3314.* Plaintiffs were required to produce communications between Plaintiffs and the FDA related to the FDA Warning Letter, but the Court denied Bard’s request to depose Plaintiffs’ Counsel regarding these communications. *See Docs. 3312, 4339.* Bard also produced punitive damages discovery, and Plaintiffs conducted a Rule 30(b)(6) deposition related to punitive damages.

1. Document Discovery

Plaintiffs have conducted extensive document discovery against Bard. Document discovery in these cases has now been completed. The Court entered the parties' stipulated ESI protocol. *See Doc. 519. CMO No. 9, entered on March 31, 2016 (Doc. 1259),* governed the production of ESI and hard-copy, paper documents. Bard has produced over 8 million pages of documents from over 100 custodians in this litigation, [a large percentage of which are duplicates from across a number of these custodial files.](#)

2. Depositions of Generic Fact Witnesses

Plaintiffs have conducted extensive deposition discovery against Bard. General fact witness discovery in these cases has now been completed. Prior to establishment of this

1 MDL, approximately 80 witnesses, the majority of which were specific to the case being
 2 discovered at the time, were deposed in connection with this litigation. CMO No. 8 (Doc.
 3 519) established a procedure concerning re-deposing these witnesses in the MDL. CMO
 4 No. 14 (Doc. 2239) established deposition protocols generally. The Court allowed
 5 additional depositions of several-a handful of corporate witnesses that had been previously
 6 deposed, as well as numerous depositions of other Bard corporate witnesses, including
 7 several Rule 30(b)(6) depositions. *See* Docs. 3685, 4311. Over 150 depositions of Bard
 8 approximately 40 (?) corporate witnesses have been conducted in this litigation.

9 **B. Case-Specific Fact Discovery**

10 The parties did not conduct case-specific fact discovery for the ten mature cases
 11 during the MDL proceedings, but instead conducted such discovery in these cases prior to
 12 their transfer to the MDL. The Court repeatedly concluded that case-specific discovery in
 13 the mature cases should await their remand. *See* Docs. 3214, at 3; 8871 at 5. The status of
 14 the remaining case-specific discovery and other pretrial issues for the mature cases being
 15 remanded, and the estimated time needed to resolve such issues and make the cases ready
 16 for trial, are listed in the attached chart Exhibit “B”.

17 **C. Expert Discovery**

18 Plaintiffs have conducted extensive general expert witness discovery against Bard.
 19 General expert discovery has now been completed in these cases. The parties designated
 20 general experts in all MDL cases, and case-specific experts in individual cases selected for
 21 the bellwether process. CMO No. 8, entered on February 2, 2016 (Doc. 519), governed
 22 expert disclosures and discovery. General expert discovery closed on July 14, 2017. *See*
 23 Doc. 3685. The parties conducted expert discovery in some of the mature cases prior to
 24 their transfer to the MDL. The status of the remaining case-specific expert discovery, and
 25 the estimated time needed to complete such discovery and make the cases ready for trial, is
 26 listed in the attached chart Exhibit B.

27 **D. Privileged Materials**

1 CMO No. 2, entered on October 30, 2015 (Doc. 249), required Bard to provide to
2 Plaintiffs all privilege logs in compliance with the Federal Rules of Civil Procedure. The
3 parties were then required to engage in an informal privilege log meet and confer process
4 to resolve any privilege disputes. Bard produced several privilege logs identifying
5 documents withheld pursuant to the attorney-client privilege, the work-product doctrine,
6 and/or other privileges. The parties regularly met and conferred regarding Bard's privilege
7 logs and engaged in negotiations regarding certain entries identified by Plaintiffs. As part
8 of that meet and confer process, Bard provided the Plaintiffs with a small number of these
9 identified items for inspection and, in some cases, withdrew certain claims of attorney-client
10 privilege and produced the previously withheld items.

11 The Court entered CMO No. 3 (Doc. 314) on December 1, 2015, to govern the non-
12 waiver of any privilege and/or work-product protection in this MDL, or in any other federal
13 or state proceeding, pursuant to Federal Rule of Evidence 502(d), from Bard's disclosure
14 or production of the contents or copies of the documents or items on its privilege logs as
15 part of the meet and confer process.

16 In late 2015, Plaintiffs challenged a substantial number of documents on Bard's
17 privilege log. The parties engaged in an extensive meet and confer process, and Bard
18 produced certain documents pursuant to the Rule 502(d) order (Doc. 314). Plaintiffs moved
19 to compel production of 133 disputed documents. The Court granted the motion in part and
20 denied in part. *See* Doc. 2813. The parties identified several categories of disputed
21 documents and provided sample documents to the Court for *in camera* review. The Court
22 denied Plaintiffs' motion with respect to seven out of the eight categories of documents and
23 found only one of the sample documents in one of the categories to contain unprivileged
24 portions that should be produced. The Court found all other documents protected by the
25 attorney-client privilege and/or work product doctrine. The Court expected the parties to
26 use this ruling as a guide to resolve remaining privilege disputes.

1 Since this ruling, there have been no further challenges to Bard's privilege logs. Bard
 2 continued to provide updated privilege logs throughout the discovery process, and the
 3 parties met and conferred to resolve privilege disputes. Privilege issues should not be a
 4 concern for any transferor court on remand.

5 **E. Protective Order/Confidentiality**

6 A stipulated protective order (Doc. 269) governing the designation, handling, use,
 7 and disclosure of confidential discovery materials was entered in November 2015. CMO
 8 No. 7, entered on January 5, 2016 (Doc. 401), governed redactions of material from
 9 additional adverse event reports, complaint files, and related documents in accordance with
 10 the Health Insurance Portability Act of 1996 ("HIPAA") and under 21 C.F.R. § 20.63(f).

11 In September 2016, to expedite production of ESI from Bard, the parties agreed to a
 12 primarily "no-eyes-on" document production as to relevancy while still performing a
 13 privilege review for this expedited ESI document production. CMO No. 17, entered on
 14 September 14, 2016 (Doc. 3372), modified the protections and requirements in the
 15 stipulated protective order (Doc. 269) and CMO No. 7 (Doc. 401) for ESI produced
 16 pursuant to this process. CMO No. 17 was amended in November 2016. *See* Doc. 4015.

17 **IV. Activities Completed Before Remand**

18 The cases listed in Exhibit A are ripe for remand, since common fact discovery and
 19 expert disclosures in this MDL have been completed, and the Court has ruled on *Daubert*
 20 motions and Defendants' summary judgment motion based on preemption.

21 **A. Key Legal and Evidentiary Rulings Affecting Remanded Cases**

22 The Court has ruled on several, significant pretrial issues affecting the remanded
 23 cases and provides the following summary of key legal and evidentiary rulings to assist the
 24 transferor court in planning further proceedings and trial.

25 **1. Federal Preemption**

26 Bard sought summary judgment on the grounds that Plaintiffs' state claims are
 27 expressly preempted by the Medical Device Amendments of 1976 ("MDA"), 21 U.S.C. §

1 360 et seq., and impliedly preempted by the MDA under the Supreme Court's conflict
 2 preemption principles. The Court denied Bard's motion. *See* Doc. 8872. Bard has appealed
 3 this ruling to the United States Court of Appeals for the Ninth Circuit (No. 18-16349).

4 The MDA curtails state regulation of medical devices through a provision that
 5 preempts state requirements that differ from or add to federal requirements. 21 U.S.C. §
 6 360k. The Bard IVC filters at issue in this litigation, like most medical devices on the market
 7 today, were cleared for market through section "510k" review, which focuses primarily on
 8 equivalence rather than safety and effectiveness. *See* § 360c(f)(1)(A).

9 The Supreme Court in *Medtronic, Inc. v. Lohr*, held that § 360k does not preempt
 10 state law claims directed at medical devices cleared through the 510(k) process because the
 11 substantial equivalence review of that process places no federal requirements on a device.
 12 518 U.S. 470, 492-94 (1996). *Lohr* also noted that the "510(k) process is focused on
 13 *equivalence, not safety.*" *Id.* at 493 (emphasis original). Although the Safe Medical Devices
 14 Act of 1990 ("SMDA"), Pub. L. 101-629, did introduce safety and effectiveness
 15 considerations into 510(k) review, it did so only comparatively. Thus, *Lohr* remains good
 16 law, and clearance of a product under 510(k) usually does not preempt state common law
 17 claims. But this does not mean that 510(k) clearance can never result in preemption.
 18 Preemption can occur under the 510(k) process only when the FDA has imposed
 19 requirements specific to the device in question.

20 ~~Although the various FDA reviews of Bard filters do appear to have been more
 21 extensive than the 510(k) review at issue in Lohr, t~~he Court concluded that Bard failed to
 22 show that the reviews imposed device-specific requirements as needed for preemption
 23 under § 360k. Even if device-specific federal requirements could be ascertained, Bard failed
 24 to show (by discussing the specific law of any particular state) that any state law claim is
 25 expressly preempted by federal requirements.

26 The Court further concluded that Plaintiffs' state law claims are not impliedly
 27 preempted because, unlike in *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 618 (2011), and *Mutual*
 28

1 *Pharmaceutical Co. v. Bartlett* – U.S. –, 133 S. Ct. 2466, 2476-78 (2013), Bard failed to
 2 show that it is impossible to do under federal law what the state laws require. The Court
 3 finally concluded that Bard failed to overcome the presumption against preemption that
 4 applies to implied preemption cases.

5 **2. Medical Monitoring Class Action**

6 In May 2016, Plaintiffs' counsel filed a medical monitoring class action, *Barraza, et*
 7 *al. v. C. R. Bard, Inc., et al.*, that was consolidated with the MDL. *See* Doc. 1 (2:16-cv-
 8 01374-DGC). Plaintiffs in the *Barraza* action sought class certification for medical
 9 monitoring relief on behalf of themselves and classes of individuals who have been
 10 implanted with a Bard IVC filter, have not had that filter removed, and have not filed a
 11 claim or lawsuit for personal injury related to the filter. The Court denied the motion. *See*
 12 Doc. 95 (2:16-cv-01374-DGC).

13 Plaintiffs class certification motion recognized that only 16 states permit claims for
 14 medical monitoring. The Court concluded that individual issues would predominate if the
 15 classes were certified, and therefore they could not be certified under Federal Rule of Civil
 16 Procedure 23(b)(3).³ The Court also concluded that the medical monitoring relief Plaintiffs
 17 sought primarily constituted monetary rather than injunctive relief, and therefore could not
 18 be certified under Federal Rule of Civil Procedure 23(b)(2). The Court further concluded
 19 that Plaintiffs could not show typicality under Federal Rule of Civil Procedure 23(a)(3).
 20 Plaintiffs ultimately dismissed their claims without prejudice. *See* Docs. 106, 107 (2:16-cv-
 21 01374-DGC).

22
 23
 24
 25 ³ These individual issues would arise from several key elements of Plaintiffs' claim: (1)
 26 whether Bard was negligent in the design of various generations of filters; (2) whether Bard
 27 was negligent in failing to disclose risks for various kinds of filters at various points in time,
 28 given what was known about the risks at the time; (3) whether the learned intermediary
 defense applies; (4) whether contributory or comparative negligence or assumption of risk
 apply; (5) whether the proposed medical monitoring is necessary and distinct from the
 ordinary course of treatment the class member is receiving; and (6) what state's law should
 apply to each class member's claim.

1 **3. Privilege Ruling relating to the Lehmann Report**
2

3 The Court granted Bard's motion for a protective order to prevent Plaintiffs from
4 using the December 15, 2004 report of Dr. John Lehmann. *See* Doc. 699. Dr. Lehmann was
5 a consultant who provided different services to Bard at different times. Following Bard's
6 receipt of potential product liability claims involving the Recovery Filter, Bard's Law
7 Department retained Dr. Lehmann as a consultant in November 2004 to provide a broad
8 assessment of the risks associated with Bard's Recovery Filter to assist the Law Department
9 in advising Bard on the extent of its legal exposure. Dr. Lehmann prepared a written report
10 of his findings at the request of the Law Department and in anticipation of litigation. The
11 Court found that the report is protected from disclosure by the work product doctrine,
12 Plaintiffs did not show a substantial need for the Report, or that they would experience an
13 undue hardship in obtaining substantially equivalent information, and Bard did not waive
14 the work product protection. The Court agreed with the parties that this ruling should not
15 affect any prior rulings on this issue in cases where the issue has previously been decided.

16 **4. Daubert Rulings**
17

18 The Court has ruled on numerous of the parties' *Daubert* motions and refers the
19 transferor court to the following orders to assist in preparing for trial:

Daubert Motion	Doc. No(s.)
Order on Motion to Exclude Opinions of Plaintiffs' Expert Dr. Rebecca Betensky	9773
Order on Motion to Exclude Opinions of Plaintiffs' Expert Mark Eisenberg	9770
Order on Motion to Exclude Opinions of Plaintiffs' Experts Drs. David Garcia and Michael Streiff	10072
Order on Motion to Exclude Opinions of Bard's Expert Dr. Clement Grassi	9991, 10230

1	Order on Motion to Exclude Opinions of Plaintiffs' Expert	9433
2	Dr. David Kessler	
3	Order on Motion to Disqualify Plaintiffs' Expert Dr. Thomas	9428,
4	Kinney	10323 at 4.
5	Order on Motion to Exclude Opinions of Plaintiffs' Experts	9434
6	Drs. Thomas Kinney, Anne Christine Roberts, and Sanjeeva	
7	Kalva	
8	Order on Motion to Exclude Opinions of Plaintiffs' Expert	10051
9	Dr. Robert McMeeking	
10	Order on Motion to Exclude Opinions of Bard Expert Dr.	10230,
11	Christopher Morris	10231
12	Order on Motion to Exclude Opinions of Plaintiffs' Expert	9771
13	Dr. Derek Muehrcke	
14	Order on Motion to Exclude Opinions of Plaintiffs' Expert	9772
15	Dr. Darren Hurst	
16	Order on Motion to Exclude Opinions of Plaintiffs' Expert	9433
17	Dr. Suzanne Parisian	
18	Order on Motion to Disqualify Plaintiffs' Experts Drs. Scott	9432
19	Resnick, Robert Vogelzang, Kush Desai, and Robert	
20	Lewandowski	
21		

22 5. **Motions in Limine**

23 The Court has made several, significant *in limine* rulings affecting the remanded
 24 cases and provides the following summary of key rulings to assist the transferor court in
 25 planning further proceedings and trial:

26 i. **FDA Evidence (“Cisson Motion”)**

27 Plaintiffs sought to exclude, under Federal Rules of Evidence 402 and 403, evidence
 28 of FDA 510(k) clearance of Bard IVC filters, and the lack of FDA enforcement action

1 against Bard in the first bellwether case, *Booker v. Bard*. The Court denied the motion
 2 under Georgia law. See Docs. 9881, 10323 at 2-3.

3 The Court concluded that under Georgia Law, “[c]ompliance with [Federal]
 4 regulations may not render a manufacturer’s design choice immune from liability,” but
 5 evidence of Bard’s compliance with the 510(k) process, while certainly not dispositive, is
 6 nonetheless relevant to the reasonableness of Bard’s conduct, whether Bard defectively
 7 designed its IVC filters, and whether Bard acted with conscious indifference to the dangers
 8 posed by its device. For these reasons, the evidence was relevant to Plaintiff’s design defect
 9 and punitive damages claims under Georgia law, which was the controlling substantive law
 10 for the first two bellwether trials. Even though the 510(k) process focuses on device
 11 equivalence, not device safety, this does not render evidence of the 510(k) process irrelevant
 12 to the reasonableness of Bard’s conduct.

13 The Court acknowledged that there were concerns that FDA evidence could mislead
 14 the jury or result in a “mini-trial,” but concluded also concluded that the probative value of
 15 the evidence was not substantially outweighed by the risk of confusing the jury as to
 16 whether Bard filters were found by the FDA to be safe and effective; nor would its
 17 admission result in mini trials. The Court believed that such concerns can be adequately
 18 addressed without excluding relevant evidence to the detriment of Defendants, if necessary,
 19 by a limiting instruction regarding the nature of the 510(k) process, and by efficient
 20 management of the evidence and adherence to the Court’s time limits for trial. The Court
 21 did not find this limiting instruction necessary in either of the *Booker* or *Jones* bellwether
 22 trials. See Trial Tr. Day 11, at 2447:18-19, *Booker v. C. R. Bard, Inc., et al.* (D. Ariz. Mar.
 23 29, 2018).

24 The Court further noted that the absence of any evidence regarding the 510(k)
 25 process would run the risk of confusing the jury as well, as many of the relevant events in
 26 this litigation occurred in the context of FDA 510(k) review, and are best understood in that
 27
 28

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1 context. Nor was the Court convinced that all FDA-references could adequately be removed
 2 from the evidence.

3 The Court lastly concluded that it would not exclude evidence and arguments by
 4 Bard that FDA took no enforcement action against it with respect to the G2 or Eclipse
 5 Filters, or evidence regarding the information Bard provided to the FDA in connection with
 6 the 510(k) process. *See* Doc. 10323 at 2-3 (*Booker*); 11011 at 4-5 (*Jones*). The Court
 7 concluded that the evidence was relevant to Plaintiff's negligent design and punitive
 8 damages claims under Georgia law, which was the controlling substantive law for the first
 9 two bellwether trials. Furthermore, the Court ultimately determined at trial that it had no
 10 basis to conclude that FDA's lack of enforcement was intended by the FDA as an assertion,
 11 and thus should not be barred as hearsay. *See* Trial Tr. Day 8, at 1681:1-6, *Booker v. C. R.*
 12 *Bard, Inc., et al.* (D. Ariz. Mar. 26, 2018).

13 Finally, the Court held that Bard would not be permitted to "present evidence or
 14 argument that the FDA 'approved' the G2 filter for market, or that clearance of the device
 15 under 510(k) review constitutes a finding by the FDA that the filter is 'safe and effective.'"
 16 (citing 21 C.F.R. § 807.97).

17 **ii. FDA Warning Letter**

18 Bard sought to exclude, under Federal Rules of Evidence 402 and 403, evidence of
 19 the July 13, 2015 FDA Warning Letter issued to Bard. The Court granted the motion in part
 20 excluding as irrelevant topics 1, 2, 4(a), 4(b), 5, 6, 7, and 8 of the warning letter. *See* Doc.
 21 10258 at 6-8; Doc. 10805. Topics 1 and 2 concern the Recovery Cone retrieval system;
 22 Topic 4(a) concerns the filter cleaning process; and Topics 4(b), 5, 6, 7, and 8 concern the
 23 Denali Filter. The Court concluded that none of these topics were relevant to the issues in
 24 the first two bellwether cases involving a G2 Filter (*Booker*) and Eclipse Filter (*Jones*).

25 The Court found that topic 3, however, concerning Bard's complaint handling and
 26 reporting of adverse events with respect to the G2 and Eclipse Filters, as well as the
 27 adequacy of Bard's evaluation for the root cause of the violations, was relevant to rebut the
 28

1 implication at trial that FDA never took any action with respect to Bard's IVC filters. *See*
 2 Trial Tr. Day 9, at 1888:21 to 1892:25, *Booker v. C. R. Bard, Inc., et al.* (D. Ariz. Mar. 27,
 3 2018); Doc. 11256. The Court also concluded that the Warning Letter is admissible under
 4 Federal Rule of Evidence 803(8), and thus should not be barred as hearsay. The Court
 5 further concluded that the probative value of topic 3 is not substantially outweighed by the
 6 danger of unfair prejudice to Bard. The Court ultimately admitted the Warning Letter in
 7 redacted form during the first two bellwether trials. *See* Docs. 10565 (*Booker*), 11256
 8 (*Jones*).

9 iii. Recovery Filter Cephalad Migration Death Evidence

10 Bard sought to exclude, under Federal Rules of Evidence 402 and 403, evidence of cephalad
 11 migration (i.e., migration of the filter toward the patient's heart) by a Recovery
 12 Filter resulting in patient death. The Court denied the motion for the *Booker* bellwether trial
 13 (G2 Filter). *See* Doc. 10258 at 4-5; Doc. 10323 at 4. The Court concluded that “that Bard’s
knowledge of problems with the Recovery filter” was relevant to the central issue in the
Booker trial – whether Bard corrected the Recovery problems in the G2, or adequately
warned about problems that were not corrected in the G2 design, and whether these failures
warranted punitive damages. *Id.* at 3. The court also concluded that it would be unfair to
 14 prevent Plaintiffs from countering Bard’s argument and evidence that its actions were
 15 reasonable, and Plaintiffs should be allowed to present evidence that “Recovery was known
 16 to be more hazardous than Bard admitted publicly or to the FDA, and that it involved
 17 problems that were not corrected in the G2 and Bard failed to warn physician and patients
 18 of those known problems.” *Id.* The Court further concluded that evidence of Recovery
 19 failures and their severity were substantially similar and particularly relevant where Bard
 20 claimed that the G2 filter was substantially equivalent to the Recovery filter and an
 21 improvement. *Id.* at 4.

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22 Bard has appealed this ruling to the United States Court of Appeals for the Ninth
 23 Circuit (No. 18-16349). The Court repeatedly granted the motion for the *Jones* bellwether
 24

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1 trial (Eclipse Filter), denying Plaintiff Jones' repeated attempts to seek reconsideration of
 2 the ruling before and during the trial. *See* Docs. 10819, 10920, 11041, 11113, 11256, 11302;
 3 *see also* Trial Tr. Day 10, at 2224:3 to 2226:24, *Jones v. C. R. Bard, Inc., et al.* (D. Ariz.
 4 May 30, 2018). Plaintiff Jones has appealed to the United States Court of Appeals for the
 5 Ninth Circuit (No. 18-16461).

6 The Court concluded for purposes of the first bellwether trial (*Booker*) involving a
 7 G2 Filter, that evidence of cephalad migration by a Recovery Filter resulting in patient death
 8 was necessary for the jury to understand the issues that prompted creation and design of the
 9 G2 Filter, and thus was relevant to Plaintiff's design defect claim. *See* Doc. 10323 at 4.⁴
 10 The Court also concluded that such evidence was relevant in responding to Bard's assertion
 11 that FDA's 510(k) clearance of the G2 Filter amounted to a determination that the G2 was
 12 as safe and effective as the Recovery Filter. The Court was concerned, however, that too
 13 heavy an emphasis on deaths caused by cephalad migration of the Recovery Filter – a kind
 14 of migration which did not occur in Ms. Booker's case – would result in unfair prejudice
 15 that substantially outweighs the probative value of the evidence.

16 The Court initially concluded for purposes of the second bellwether trial (*Jones*)
 17 involving an Eclipse Filter, that evidence of cephalad migration deaths by the Recovery
 18 Filter was inadmissible because it was only marginally relevant in Ms. Jones' case. *See*
 19 Docs. 10819, 10920, 11041, 11113, 11256, 11302. This is because cephalad migration did
 20 not continue in any significant degree beyond the Recovery Filter; cephalad migration

22 ⁴ After the *Booker* bellwether trial, the Court later found that changes Bard made in response
 23 to cephalad migration largely eliminated that direction of migration in the G2 and later
 24 filters. *See* Docs. 10819, 10920, 11041. Counsel for Plaintiff agreed that there have been
 25 very little few reported cephalad migrations after the Recovery Filter, in part because the
 26 G2 Filter was given a wider design to correct the cephalad migration problem. See Doc.
 27 10920. The Court's notes from the *Booker* trial reflect that Plaintiff identified only one
 28 instance of cephalad migration by a G2 Filter. See Doc. 10819. Even after a review of
thousands of complaints in Bard's Trackwise database, Plaintiffs provided evidence of
cephalad migration by one G2 and three G2X filters out of approximately 180,000
(according to Bard) G2 and G2X Filters sold. See Doc. 10920. Counsel was not able to
identify any instance of cephalad migration causing death in the G2 or later filters. Thus,
the Court concluded that cephalad migration deaths stopped after the Recovery Filter, and
that cephalad migrations largely ceased due to changes made to the G2-line of filters.

Commented [A1]: Again, this is misleading and reflects only the defense conclusions about these rulings. There were sidebar, testimony stricken and open door moments throughout the trial that resulted in the judge allowing some of this evidence into that trial.

Commented [A2]: Again, only half the story...

1 deaths all occurred before the Recovery Filter was taken off the market in late 2005; the
 2 deaths said nothing about three of Ms. Jones' four claims: strict liability design defect, strict
 3 liability failure-to-warn, or negligent failure-to-warn; although the evidence may add some
 4 weight to her fourth claim – negligent design – it is not central to proof of design negligence;
 5 and instances of cephalad migration resulting in death are not substantially similar to
 6 complications experienced by Ms. Jones and therefore do not meet the Georgia standard for
 7 evidence on punitive damages. *See* Docs. 10819, 11041.

8 The Court also found that deaths caused by a non-predicate device, and by a form of
 9 migration that was eliminated years earlier, are of sufficiently limited probative value that
 10 their relevancy is substantially outweighed by the danger of unfair prejudice because the
 11 death evidence may prompt a jury decision based on emotion. Therefore, the Court
 12 concluded that this evidence is inadmissible under Rule 403. The Court further concluded
 13 that Ms. Jones would not be seriously hampered in her ability to prove Recovery Filter
 14 complications, testing, and design when references to cephalad migration deaths are
 15 removed. *See* Doc. 11041. As a result, the Court held that such references should be
 16 redacted from evidence to be presented at the *Jones* bellwether trial. The Court made sure
 17 to balance this concern with the competing concern that it would be unfair for Bard to
 18 present statistics about Recovery and not allow the Plaintiffs to present competing evidence
 19 that included Recovery deaths. *See, e.g.* Trial Tr. Day 2, at 242:18 to 242:23, *Jones v. C. R.*
 20 *Bard, Inc., et al.* (D. Ariz. May 16, 2018). Based on this, Plaintiffs argued at various points
 21 during the trial that Bard had opened the door to presenting evidence about Recovery
 22 cephalad migration deaths; *The* Court repeatedly made fact-specific determinations about
 23 this point, and held that even though Bard presented some evidence that made the Recovery
 24 evidence more relevant such that it became a close call and reasonable jurists could come
 25 to different conclusions, the Court affirmed this ruling during the *Jones* bellwether trial that
 26 there was a danger of unfair prejudice. *See* Docs. 11113, 11302; Trial Tr. Day 10, at 2224:3
 27 to 2226:24, *Jones v. C. R. Bard, Inc., et al.* (D. Ariz. May 30, 2018). Ultimately the Court

Commented [A3]: See comment above about this issue and the many moments in trial this was not what occurred.

1 determined that when Bard introduced evidence that Bard had given the FDA everything it
 2 knew about the Recovery Filter complications and implied that all of the information was
 3 provided to doctors and the FDA approved of Bard's communications on this point, that the
 4 Plaintiffs should be entitled to rebut the evidence. Trial Tr. Day 7 at 1488:2 to 1488:17,
 5 *Jones v. C. R. Bard, Inc., et al.* (D. Ariz. May 24, 2018). The Court concluded that it would
 6 be unfair to Plaintiffs to allow them to introduce evidence of Recovery deaths at the late
 7 stage of the trial, given the time allocation decisions that had been made and determined
 8 that it should give an instruction to the jury to disregard the evidence Bard introduced that
 9 it sent letters to doctors about the Recovery filter, told the FDA about the letters, and that
 10 the FDA reviewed the letters and suggested changes that Bard implemented before sending.
 11 Trial Tr. Day 7 at 1498:3 to 1498:24, 1500:5 to 1500:19, *Jones v. C. R. Bard, Inc., et al.* (D.
 12 Ariz. May 24, 2018).

13 **iv. Simon Nitinol Filter Complication Evidence**

14 Plaintiffs sought to exclude evidence of complications associated with Bard's SNF
 15 on the grounds that Plaintiffs were barred from conducting relevant discovery into the
 16 design and testing of the SNF under CMO No. 10 (Doc. 1319). The Court denied the
 17 request. *See* Doc. 10489.

18 The Court disagreed that Plaintiffs were foreclosed from obtaining relevant evidence
 19 for rebuttal. The Court foreclosed this discovery because Plaintiffs did not contend then,
 20 and does not contend now, that the SNF is defective. The Court could not see, and Plaintiffs
 21 did not explain, how discovery into the design and testing of the SNF would have produced
 22 any information on failure rates the SNF experienced after it was on the market. Plaintiffs
 23 also had rebuttal evidence showing that reported failure rates for SNF were lower than
 24 Recovery and G2 Filter rates. The Court ultimately concluded it would not preclude Bard
 25 from presenting its SNF evidence on the basis of a discovery ruling and invited Plaintiffs to
 26 make appropriate evidentiary objections at trial.

v. Use of Deposition Testimony of Withdrawn Bard Experts at Trial

Defendants sought to preclude, under Federal Rules of Evidence 804 and 403, Plaintiffs' use at trial of the depositions of three defense expert witnesses, Drs. Moritz, Rogers, and Stein, who originally were retained by Bard but have since been withdrawn in some or all cases. The Court denied the request in part. *See* Doc. 10382.

The Court found that Bard failed to show that the depositions are inadmissible on hearsay grounds, but also agreed that it would be unfairly prejudicial under Rule 403 to disclose to the jury that the experts originally were retained by Bard. Therefore, the Court concluded that Plaintiffs may use portions of the experts' depositions that support Plaintiffs' case, but may not disclose to the jury, through argument or deposition excerpts, that the experts originally were retained by Bard. Additionally, the Court was concerned about the presentation of cumulative evidence, and required Plaintiffs to first show "that no other expert of similar qualifications is available or that the unavailable expert has some unique testimony to contribute," before the deposition of any withdrawn expert may be used at trial.

vi. Other *in Limine* Rulings

The Court's other *in limine* rulings (Docs. 10075, 10235, 10258, 10947) may be useful in other jurisdictions, and the Court refers the transferor court to the following orders to assist in preparing for trial:⁵

- **Parties' (*Booker*) Joint Stipulation on Motions *in Limine*:** The Court, by stipulation of the parties, excluded evidence, argument, and testimony concerning several case-specific issues in the *Booker* bellwether trial, as well as a few general issues, including: C. R. Bard, Inc.'s 1994 criminal conviction; other lawsuits or claims against Bard; and advertising by Plaintiff's counsel, Plaintiff's

⁵ The Court also ruled on the parties' motions *in limine* concerning several case-specific issues. See Docs. 10075 (Plaintiffs' (*Booker*) MIL No. 12), 10258 (Plaintiffs' (*Booker*) MIL Nos. 6, 13), 10947 (Bard's (*Jones*) MIL No. 1; Plaintiffs' (*Jones*) MIL Nos. 1-4, 7).

counsel specializing in personal injury and/or products liability litigation, contingency fee agreements, and/or advertising by any counsel nationally for Bard IVC filter cases and/or any other IVC filter cases. *See Doc. 10235.*

- **Bard’s (*Booker*) MIL No. 1:** The Court permitted evidence and testimony concerning Recovery Filter complications. *See* Doc. 10258; *see also* Doc. 10819 (*Jones*). As noted above, the Court permitted evidence and testimony concerning Recovery Filter cephalad migrations resulting in patient death in the *Booker* bellwether trial involving a G2 Filter (Doc. 10323 at 4), but excluded such evidence in the *Jones* bellwether trial involving an Eclipse Filter. *See* Docs. 10819, 10920, 11041.
- **Bard’s (*Booker*) MIL No. 2:** The Court permitted evidence and testimony relating to the development of the Recovery Filter. *See* Docs. 10258; *see also* Doc. 10819 (*Jones*).
- **Bard’s (*Booker*) MIL No. 4:** The Court excluded evidence and testimony concerning a photograph of Michael Randall pointing his middle finger at the camera. *See* Doc. 10075.
- **Bard’s (*Booker*) MIL No. 5:** The Court permitted Plaintiff’s Expert Dr. Thomas Kinney to be called as a fact witness, but prohibited him from testifying regarding his prior work for Bard as an expert witness in two prior IVC filter cases or as a paid consultant to Bard for several years. *See* Docs. 10075, 10323 at 4.
- **Plaintiffs’ (*Booker*) MIL No. 2:** The Court reserved ruling until trial on evidence and testimony regarding the nature of Bard’s business, including the nature, quality, and usefulness of its products, the conscientiousness of its employees, references to its mission statement, and the fact that its products are designed to promote health and save lives. *See* Doc. 10075.

- 1 • **Plaintiffs' (*Booker*) MIL No. 3:** The Court permitted evidence and testimony
2 concerning the benefits of IVC filters, including testimony describing Bard filters
3 as "lifesaving" devices. *See* Doc. 10258.
- 4
- 5 • **Plaintiffs' (*Booker*) MIL No. 4:** The Court permitted evidence and testimony
6 that IVC filters, including Bard's filters, are within the standard of care for the
7 medical treatment of pulmonary embolism. *See* Doc. 10258. Bard stated it would
8 not characterize IVC filters as the "gold standard" for the treatment of pulmonary
9 embolisms.
- 10
- 11 • **Plaintiffs' (*Booker*) MIL No. 5:** The Court denied as moot Plaintiff's motion to
12 exclude evidence and argument relating to failure rates, complication rates,
13 percentages, or comparative analysis of any injuries that were not produced to
14 Plaintiffs during discovery, as all such information was produced. *See* Doc.
15 10075.
- 16
- 17 • **Plaintiffs' (*Booker*) MIL No. 7:** The Court excluded evidence and argument
18 relating to prior judicial opinions about Plaintiffs' experts, including the number
19 of times their testimony has been precluded in other cases. *See* Doc. 10075.
- 20
- 21 • **Plaintiffs' (*Booker*) MIL No. 8:** The Court excluded evidence and argument that
22 a verdict against Bard will have an adverse impact on the medical community,
23 future medical device research or costs, and the availability of medical care. *See*
24 Doc. 10075.
- 25
- 26 • **Plaintiffs' (*Booker*) MIL No. 9:** The Court deferred ruling on the relevance of
27 statements or lack of statements from medical societies, including the Society of
28 Interventional Radiologists ("SIR"), until trial. *See* Doc. 10258. The Court
ultimately admitted this evidence in both the *Booker* and *Jones* bellwether trials.

- 1 • **Plaintiffs' (*Booker*) MIL No. 10:** The Court excluded evidence and testimony
2 that Bard needed FDA consent to add any warning to its labels, send warning
3 letters to physicians and patients, or recall its filters. *See* Doc. 10258. The Court
4 permitted evidence and argument explaining the reasons why Bard filters were
5 not recalled, FDA's potential involvement in any recall effort, and the fact that
6 warnings about failure rates and increased risks could not be based on MDR and
7 MAUDE data alone.
- 8
9 • **Plaintiffs' (*Booker*) MIL No. 11:** The Court permitted evidence and argument
10 relating to the informed consent form signed by the Plaintiff prior to insertion of
11 the IVC filter, even though the form is not specific to IVC filters or Bard filters.
12 *See* Doc. 10075.
- 13
14 • **Plaintiffs' (*Booker*) MIL No. 14:** The Court reserved its ruling until trial on
15 evidence and argument relating to certain background information and personal
16 traits of Bard employees and witnesses. *See* Doc. 10075.
- 17
18 • **Bard's (*Jones*) MIL No. 2:** The Court excluded evidence and testimony of other
19 lawsuits against Bard. *See* Doc. 10947.
- 20
21 • **Plaintiffs' (*Jones*) MIL No. 5:** The Court excluded evidence and testimony that
22 Bard employees or their relatives have received Bard IVC filter implants. *See*
23 Doc. 10947.
- 24
25 • **Plaintiffs' (*Jones*) MIL No. 6:** The Court permitted evidence and testimony
26 concerning whether a parties' expert had been retained by the same attorneys in
27 other litigation. *See* Doc. 10947.

1	Deponent	Depo. Date	Doc. No(s).
2	Daniel Orms	08/16/2016	10403, 11073
3	Abithal Raji-Kubba	07/18/2016	11064
4	Gin Schulz	01/30/2014	10403
5	Christopher Smith	08/03/2017	11073
6	William Stavropoulos	02/01/2017	10524
7	Jack Sullivan	11/03/2016 09/16/2016	10486, 11080
8	Melanie Sussman	04/07/2017	11073
9	Mehdi Syed	03/02/2018	11313
10	Scott Trerotola	01/20/2017	10524
11	Douglas Uelmen	10/04/2013	10403, 11080
12	Carol Vierling	05/11/2016	10486, 11073
13	Mark Wilson	01/31/2017	10922
14	Natalie Wong	10/18/2016	10403

17 V. Further Proceedings Needed in Remand Courts

18 A. General Discovery

19 All general fact and expert discovery in these cases has been completed before
20 remand. Therefore, transferor courts need not be concerned with facilitating general expert,
21 corporate, and third-party discovery. –This is not meant to remove the power of the
transferor court to exercise its discretion when dealing with “good cause” and “in the
interest of justice” issues that may be unique and relevant in remanded cases.

24 B. Case-Specific Discovery and Trial Preparation

25 According to the parties, the status of the remaining discovery and other pretrial
26 issues for the cases being remanded, and the estimated time needed to resolve such issues
27 and make the cases ready for trial, are listed in the attached chart Exhibit B. Final trial
28

1 preparation in the bellwether trials was governed by Court orders. *See* Docs. 8871, 10323,
 2 10587, 11011, 11320, 11321.

3 **VI. Documents to be Sent to Transferor Court**

4 After receiving the Final Remand Order (“FRO”) from the JPML, the Clerk of the
 5 Court will issue a letter to the transferor courts, via email, setting out the process for
 6 transferring the individual cases listed in the FRO. The letter and certified copy of the FRO
 7 will be sent to the transferor’s court’s email address.

8 If a party believes that the docket sheet for a particular case being remanded is not
 9 correct, a party to that case may, with notice to all other parties in the case, file with the
 10 transferor court a Designation Amending the Record. Upon receiving a Designation
 11 Amending the Record, the transferor court may make any needed changes to the docket. If
 12 the docket is revised to include additional documents, the parties should provide those
 13 documents to the transferor court.

14 RESPECTFULLY SUBMITTED this 13th day of August, 2018.

15 s/Richard B. North, Jr.
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29 **Attorney for Defendants C. R. Bard, Inc. and**
 30 **Bard Peripheral Vascular, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Richard B. North, Jr.
Richard B. North, Jr.